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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/721,333

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EXAMINER

KANG, SUK JIN

ART UNIT

PAPER NUMBER

2619

MAIL DATE

DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/721,333

Applicant(s)

GALAND ET AL.

Examiner

Suk Jin Kang

Art Unit

2619

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 08 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935.C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 7-11 is/are rejected.
- 7) ☒ Claim(s) 5 and 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Drawings***

1. Figure 1 should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to because of minor informalities. Figures 1-4 lack descriptive text and labeling. Also, in Figure 1, access network, N<sub>A</sub>, should be properly labeled as such. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date

of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 101***

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. **Claim 11** is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. Claim 11 states "A computer program stored in a computer readable medium for accessing data flows in a telecommunication network". Since the computer readable medium could be considered an electromagnetic signal, since no examples of computer readable mediums are stated in applicant's specification, the subject matter claimed in Claim 11 is again deemed non-statutory subjected matter. Appropriate correction to the specification is required.

***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

6. **Claim 11** is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which

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was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 11 states "A computer program stored in a computer readable medium for accessing data flows in a telecommunication network". Upon reading applicant's specification, it does not clearly state what applicant considers to be a computer readable medium.

***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the Examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the Examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

8. **Claims 1-4 and 7-11** are rejected under 35 U.S.C. 103(a) as being unpatentable over applicant's own **Admitted Prior Art** in view of **Gai et al.** (U.S. Patent # 6,434,624 B1), and further in view of **Raz et al.** (U.S. Patent # 6,529,515 B1).

Consider **claims 1, 10, and 11**, applicant's own Admitted Prior Art discloses a method and a device for accessing a telecommunication network ( $R_B$ , access device, figure 1) comprising means for transmitting data flows (applicant's specification, page 2, lines 3-7) between at least one first telecommunication client ( $B$ , client, figure 1) connected to the said telecommunication network ( $N$ , telecommunication network, figure 1) by means of an access network ( $N_B$ , access network, figure 1) possessing throughput performances lower than the said telecommunication network (applicant's specification, page 2, lines 25-27) and at least one second telecommunication client ( $S$ , server, figure 1) accessible through the said telecommunication network ( $N$ , telecommunication network, figure 1), the said information flows being organised in sessions (applicant's specification, page 2, lines 3-7), each data flow of one and the same session providing communication between the same telecommunication clients (applicant's specification,

page 2, lines 3-17), but may not expressly disclose degradation means for degrading at least one quality parameter of at least one of said data flows in order to compensate for the difference in throughputs between the said telecommunication network and the said access network, wherein said degradation means make use of a module associated with each session, for carrying out the said degradation, said module being determined by said first client.

In the same field of endeavor, Gai et al. discloses degradation means (intermediate node, 210, Local Policy enforcer, figure 3) for degrading at least one quality parameter of at least one of said data flows (column 6 line 67, column 7 lines 1-4 and 8-13) in order to compensate for the difference in throughputs between the said telecommunication network and the said access network (column 7 lines 39-52).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate degrading quality parameters of data flows as taught by Gai et al. with the device as disclosed by applicant's own Admitted Prior Art for the purpose of effectively degrading data flow sessions, as suggested by Applicant (applicant's specification, page 3, lines 11-20).

However, applicant's own Admitted Prior Art, as modified by Gai et al., may not expressly disclose making use of a module associated with each session, for carrying out the said degradation, the said module being determined by the said first client.

Nonetheless, in the same field of endeavor, Raz et al. further discloses making use of a module (active packets, column 4 lines 15-18) associated with each session (column 4 lines 65-67, column 5 lines 1-5), for carrying out the said degradation (column

9 lines 7-12 and 31-33), the said module (active packets containing programs) being determined by the said first client (column 4 lines 51-67, column 5 lines 1-9, column 10 lines 31-33).

Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to incorporate a module associated with each session as taught by Raz et al. with the device as disclosed by own Admitted Prior Art, as modified by Gai et al., for the purpose of effectively degrading data flow sessions.

Consider **claim 2**, and as applied to claim 1, applicant's own Admitted Prior Art, as modified by Gai et al. and Raz et al., discloses the claimed invention, but may not expressly disclose an access device in which the said module principally consists of executable code allowing the degradation of the said at least one quality parameter.

Nonetheless, Raz et al. further discloses an access device in which the said module principally consists of executable code allowing the degradation of the said at least one quality parameter (column 4 lines 57-60, column 5 lines 1-23).

Consider **claim 3**, and as applied to claim 2, applicant's own Admitted Prior Art, as modified by Gai et al. and Raz et al., discloses the claimed invention, but may not expressly disclose an access device in which the said module is transmitted in the payload of an active packet transmitted by the said first client.

Nonetheless, Raz et al. further discloses an access device in which the said module is transmitted in the payload of an active packet transmitted by the said first client (column 4 lines 14-18 and 57-60, column 5 lines 1-23).

Consider **claim 4**, and as applied to claim 2, applicant's own Admitted Prior Art, as modified by Gai et al. and Raz et al., discloses the claimed invention, but may not expressly disclose an access device in which the said module is downloaded from a code server and identified by an identifier contained in an active packet transmitted by the said first client.

Nonetheless, Gai et al. further discloses an access device in which the said module is downloaded from a code server (222, host/server, figure 2, column 6 lines 11-27) and identified by an identifier contained in an active packet transmitted by the said first client (column 7 lines 39-52).

Consider **claim 7**, and as applied to claim 1, applicant's own Admitted Prior Art, as modified by Gai et al. and Raz et al., discloses the claimed invention, but may not expressly disclose an access device in which the said first client determines the said module in cooperation with the end user, in particular by means of configuration parameters.

Nonetheless, Raz et al. further discloses an access device in which the said first client determines the said module in cooperation with the end user, in particular by means of configuration parameters (column 9 lines 13-24).

Consider **claim 8**, and as applied to claim 1, applicant's own Admitted Prior Art, as modified by Gai et al. and Raz et al., discloses the claimed invention, but may not expressly disclose an access device in which the said module consists of a set of policy rules supplied by a policy server.

Nonetheless, Gai et al. further discloses an access device in which the said module consists of a set of policy rules supplied by a policy server (216, policy server, figure 2, column 6 lines 4-10).

Consider **claim 9**, and as applied to claim 8, applicant's own Admitted Prior Art, as modified by Gai et al. and Raz et al., discloses the claimed invention, but may not expressly disclose an access device in which the communications with the policy server conform to the CORBA protocol.

Nonetheless, Raz et al. further discloses an access device in which the communications with the policy server conform to the CORBA protocol (column 2 lines 1-5, column 5 lines 39-46).

#### ***Allowable Subject Matter***

9. **Claims 5-6** are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

10. Applicant's arguments with respect to claims 1-4 and 7-11 have been considered but are moot in view of the new ground(s) of rejection.

Consider claim 1, Applicant argues, on page 13 of the Remarks, that "However, Raz does not teach, anywhere in the reference, the recited limitation of "wherein said

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degradation means make use of a module associated with each session, for carrying out degradation, said module being determined by said first client" ...".

The Examiner respectfully disagrees with Applicant's argument because as recited in the above rejection, Raz et al. suggests active packets (module) sent by any host to an intermediate, active nodes in a network. The active packets (modules) contain active programs containing code used to perform specific tasks (i.e. parameter degrading functions) during a session on the network (column 4 lines 65-67, column 5 lines 1-5, column 9 lines 7-12 and 31-33, column 10 lines 31-33). Thus a module determined by a client for use in degradation of quality parameters is suggested by Raz.

### ***Conclusion***

11. Any response to this Office Action should be **faxed to (571) 273-8300 or mailed to:**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Hand-delivered responses** should be brought to

Customer Service Window  
Randolph Building  
401 Dulany Street  
Alexandria, VA 22314

12. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Suk Jin Kang whose telephone number is (571) 270-1771. The examiner can normally be reached on Monday - Friday 8:00-5:00 EST.

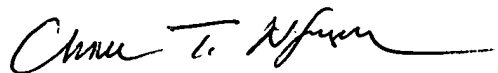
If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Chau Nguyen can be reached on (571) 272-3126. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free) or 703-305-3028.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist/customer service whose telephone number is (571) 272-2600.

*Suk Jin Kang*  
S.J.K./sjk

January 15, 2008



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